

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION NO 1257 OF 1999

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be
allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the
fair copy of the Order ?

4. Whether this case involves a substantial
question of law as to the interpretation of
the Constitution of India, 1950 of any Order
made thereunder?

5. Whether it is to be circulated to the Civil
Judge?

PATEL KACHARABHAI NATHABHAI
VERSUS

PATEL DAVAJIBHAI SANKARBHAI

Appearance:

MR JV JAPEE for the Petitioner

MR AM PRIKH for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 30/12/1999

C A V JUDGMENT

#. The defendants directed this revision application under Section 115 of the Code of Civil Procedure against the order of the learned Civil Judge (SD), Himatnagar dated 4/8/99 below Exh.35 in Special Civil Suit No.62 of 1997. Under this order the learned Trial Court accepted the application filed by the plaintiffs-respondents for grant of permission to amend the plaint.

#. The learned counsel for the petitioner contended that by grant of this amendment in the plaint the plaintiffs-respondents have sought altogether a different cause of action. It has next been contended that the amendment will cause a serious prejudice to the defendants-petitioners.

#. In contra the learned counsel for the plaintiffs-respondents submitted that the learned Trial Court has passed a just and reasonable order and it will not cause any prejudice to the defendants-petitioners as the suit is at its initial stage. Even issues were not framed. It has next been contended that the plaintiffs-respondents are not pleading any different cause of action. The partnership firm has been dissolved after filing of the suit. By this amendment, these facts are to be brought on the record and consequent changes in the plaint. Lastly, it is contended that the trial court has vide power under Order 6 Rule 17 of the Code of Civil Procedure to permit the amendment of the pleadings of the parties at any stage of the suit.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. The suit has been filed by the plaintiffs-respondents in the court on 23/10/97. In the written statement a defence has been taken that the firm is unregistered and, therefore, the suit is not maintainable. So, a plea of statutory bar of the suit has been raised. The learned counsel for the petitioners submit that because of this amendment a different cause of action is sought to be raised in the plaint. To overcome this lacuna / deficit which possibly would have rendered the suit not maintainable and the amendment should not have been allowed. I do not find any force in these contentions. The bar of the suit under some statutory provisions if it is pleaded as defence in written statement certainly it is open to the plaintiff to accordingly amend the plaint to overcome this statutory bar of maintainability of suit. If this amendment is allowed, it will not certainly cause any prejudice to the defendants. It is in fact the defendants-petitioners themselves have make

it necessary for the plaintiff to get the suit amended and the suit is at its initial stage and otherwise also on the basis of the same what it is said to be a different cause of action fresh suit could have been filed. This matter is squarely covered by the decision of the apex court in the case of Suraj Prakash Bhasin V. Smt. Raj Rani Bhasin reported in AIR 1981 SC 485. The Lordships of the Hon'ble Supreme Court held that;

"The liberal principles which guide the exercise of discretion in allowing amendments have been laid down in numerous decisions of this Court. Multiplicity of proceedings being avoided is one criterion. Amendments which do not totally alter the character of the action are readily granted while care is taken to see that injustice and prejudice of an irremediable character are not inflicted on the opposite party under pretence of amendment of pleadings. The Court must be guided by the rule of justice expressed by the Privy Council in Ma Shwe Mya V Maung Po Hnaung, AIR 1922 PC 249 at pp. 250-51 : p.1283-84 of AIR Comm. CPC(1908) 9th Edn. Vol. 2.

All rules of Court are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless, no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject matter of the suit."

The amendment of the plaint can be permitted by the courts under Order 6 Rule 17 of the Code of Civil Procedure so as to include the cause of action which had not occurred on the day of the suit provided it does result causing any prejudice to the defendant. Secondly, the application is not belated and the opposite party was not deprived of any defence, which would have been open to it if a fresh suit on the new cause of action is brought. Leaving apart whether it is different cause of action or not, however, it is not the case that any of the defence which would have been open to the defendants-petitioners in case the suit would have been

filed on this cause of action they may be deprived of the same. By this amendment, I fail to see how any prejudice will cause to the defendants-petitioners. It is still open to them to take all their defences in reply to the amended plaint. The learned Trial Court has passed a just and reasonable order to which no exception can be made. In case this order is allowed to stand it will not occasion a failure of justice or will cause any injury to the petitioners.

In the result, the civil revision application fails and the same is dismissed with costs. Rule discharged.

(S.K.Keshote, J.)

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